

WRIT PETITION NO. 6359 OF 2005.

Shri K.N. Joshi for the respondent No.1.

DATED : 22.12.2005.

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4. Needless to mention that under O.14 R.2 of the Civil Procedure Code, issue can be framed at any time at any stage of the suit. Appeal being continuation of the suit, the same will principle will hold good even for the appeal.

5. Having examined rival pleadings, the issues sought to be suggested do arise from the pleadings of the parties.

6. Learned Counsel for the respondents has no objection for allowing the petitioner to raise plea in this behalf.

7. In the above view of the matter, the lower appellate Court is directed to address itself on the aforesaid issues and decide the same on its own merits. If it comes to the conclusion that no sufficient material is available on record and decides these issues, then, the lower appellate Court may pass appropriate order in that behalf in exercise of its discretion.

8. In the above view of the matter, impugned order is set aside. Petition is allowed. Rule is made absolute with no order as to costs.